

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

DEVON A. SMITH ¹⁰⁻²⁴⁹¹

10 2397

(In the space above enter the full name(s) of the plaintiff(s).)

- against -

Sgt. Biley
Officer, Banks (Capt team)
Officer, McCann (Bogger)
Officer, Jane, Doe-1
Officer, John, Doe-2

RECEIVED

MAY 20 2010
COMPLAINT

under the
Civil Rights Act, 42 U.S.C. § 1983
(Prisoner Complaint)

Jury Trial: ☒ Yes ☐ No
(check one)

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Part I. Addresses should not be included here.)

I. Parties in this complaint:

- A. List your name, identification number, and the name and address of your current place of confinement. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff Name DEVON A. SMITH
ID # 10-2491
Current Institution MONTGOMERY COUNTY PRISON
Address 60 EAGLEVILLE ROAD
EAGLEVILLE, PENNSYLVANIA 19403-1400

- B. List all defendants' names, positions, places of employment, and the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant No. 1 Name Sgt, Biley Shield # N/A
Where Currently Employed Montgomery County Prison
Address 60 Eagleville Road
Eagleville, Pennsylvania 19403-1400

Defendant No. 2 Name Officer, Banks Shield # N/A
Where Currently Employed Montgomery County Prison
Address 60 Eagleville Road
Eagleville, Pennsylvania 19403-1400

Defendant No. 3 Name Officer, McCann Shield # 114
Where Currently Employed Montgomery County Prison
Address 60 Eagleville Road
Eagleville, Pennsylvania 19403-1400

Defendant No. 4 Name Officer, Jane Doe #1 Shield # N/A
Where Currently Employed Montgomery County Prison
Address 60 Eagleville Road
Eagleville, Pennsylvania 19403-1400

Defendant No. 5 Name Officer, John Doe #2 Shield # N/A
Where Currently Employed Montgomery County Prison
Address 60 Eagleville Road
Eagleville, Pennsylvania 19403-1400

II. Statement of Claim:

State as briefly as possible the facts of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

A. In what institution did the events giving rise to your claim(s) occur? Montgomery County Correctional Facility

B. Where in the institution did the events giving rise to your claim(s) occur? M-2
The Mental Health ward in medical.
At MCCF

C. What date and approximate time did the events giving rise to your claim(s) occur? 04
3-11-10 At About or between 8:30 And 11:00

What
happened
to you?

D. Facts: SGT, Riley came running on the pod and ordered me to move away from my cell door with pepper spray in his right hand at which time I did so he then gave a female officer an order to open my cell door at which time he and 3 other officers rushed in my cell and SGT, Riley punched me in my face with a closed fist strike me on the left side of my eye also he kicked me when I was being led down by 3 of his officers.

Who
did
what?

Officer Barks he kicked me in my face and he punched me in my chest taking my breath from me at which point he pulled a pair of handcuffs out and hit me in my face on the left side at which time my left eye began to bleed and I saw him give the handcuffs to officer McCann to put in his pocket and he held me down as I was being beat up.

Was
anyone
else
involved?

Who else
saw what
happened?

Officer McCann held me down also kicked me as I lay bleeding on the floor of my cell at which time I began to black out and when I woke up I was in sport restraints with officer Barks standing on the right side of the bed looking down at me smiling.

III. Injuries:

If you sustained injuries related to the events alleged above, describe them and state what medical treatment, if any, you required and received. My left eye was closed by the force of me getting hit I had a large gash over my left eye it was swollen very bad and my right eye was swollen too. Both eyes were blood shot I had blood in both of my eyes plus I saw the eye doctor who told me I needed to see an outside doctor about my eye but the jail would not allow me to go out. Also my eyes are both still messed up to date and I have sharp pain in my left eye every day.

IV. Exhaustion of Administrative Remedies:

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." Administrative remedies are also known as grievance procedures.

①

CONT Statement of Claim

Officer, Jane Doe - I

Was the control Booth officer who called Acode on me now she lied to Sg6, Riley And As I was beat up she sat in the control Booth watched me get kicked punched And witnessed how I did not Rest At All And she even falsified her report As to what really took place once I was strapped down she was watching me bleeding from my left eye As I called her for medical help she just looked at me And laughed at me And never once called medical As I lay strapped down bleeding.

Officer, John Doe - I

This officer Also played a part in beating me up now I don't know his name but he did A report the day of my assault he hit And kicked me he told me no one fucks with my coworkers And thinks they will get away with it Also one of my eye witnesses who was Sg6 who saw me getting beat up told them to stop And John Doe I told my eye witness to get off his cell door And mind his own business or he would get the same treatment At which time my eye witnesses started yelling And screaming At the officers And that's when they slowed up on beating me up And medical came on the pod to assess me but was told I could not be taken to medical so I lost A lot of blood.

2

end of statement of
claim.

My two eye witnesses are As follows

1. Christopher Clearwater

ID# 10-0567 he was in cell 526

2. Allen, Oliphant

ID# 10-0782 he was in cell 520

Both of my eye witnesses saw
and heard what happened and what
was said to me and they were
told if you don't mind your own
business you'll get the same treatment.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

Yes ☒ No ☐

If YES, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

Montgomery County Correctional Facility
(MCCF) Mental Health ward M-2 Medical

B. Does the jail, prison or other correctional facility where your claim(s) arose have a grievance procedure?

Yes ☒ No ☐ Do Not Know ☐

C. Does the grievance procedure at the jail, prison or other correctional facility where your claim(s) arose cover some or all of your claim(s)?

Yes ☒ No ☐ Do Not Know ☐

If YES, which claim(s)? Assault - Use of Force

D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose?

Yes ☒ No ☐

If NO, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

Yes ☐ No ☐

E. If you did file a grievance, about the events described in this complaint, where did you file the grievance?

Montgomery County Correctional Facility

1. Which claim(s) in this complaint did you grieve? Assault And to much Use of force By officers.

2. What was the result, if any? It was unfounded By Lt. Brandon Bates on 3-27-10 who did not even interview me or my 2 eye witnesses.

3. What steps, if any, did you take to appeal that decision? Describe all efforts to appeal to the highest level of the grievance process.

I asked for the proper Appeal form but was denied by my social worker Mike Decoster. Also I wrote the warden and Deputy warden and they never responded to any of my request slips. All my Request are on file here in the jail. I also spoke to a Major who came from with one of the inspectors also 3 but in the medical unit and they did nothing to help me get my Appeal form.

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here: _____

N/A

2. If you did not file a grievance but informed any officials of your claim, state who you informed, when and how, and their response, if any: _____

N/A

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

I wrote so many Request slips to my social worker but he never responded also I wrote the warden and deputy warden also the only way we can get grievance or Appeal forms is from the social worker and he refuses to give out grievance he says we need to see him then you are not allowed an Appeal form unless the deputy warden approves it which is wrong I was told by my social worker.

Note:

You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.

V. Relief:

State what you want the Court to do for you (including the amount of monetary compensation, if any, that you are seeking and the basis for such amount):

I am asking for compensatory damages in the amount of \$100,000 And punitive damages in the amount of \$80,000 And nominal damages in the amount of \$65,000 And any and all damages deemed in my favor by the court. Due to the fact my face is not the same and my eyes are still bruised and I have permanent pain above my left eye, and bruising under both my left and right eyes and I get real bad pain from my head and dizziness when I get up ever 4 Day.

Also My doctor says My vision in My left eye has gotten 2 times worse And that I may need eye surgery to fix my problem But I could lose my left eye. But I have been on 5 different pain meds And nothing is helping me with my Pain At All.

The Reason I ask for this Relief is so my Medical expenses are fully covered And I can get the right meds to Deal with my pain And pay All My sick call fees I owe In Regards to my injuries I received From my use of force And the Assault that happened to me By the officers here at (MCCF) Montgomery County Prison. It was excessive use of force By the officers which violates my Rights under the 8th Amendment of the U.S. Constitution And cruel And unusual punishment.

VI. Previous lawsuits:

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes ☒ No ☐

B. If your answer to A is YES, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another sheet of paper, using the same format.)

1. Parties to the previous lawsuit:

Plaintiff DEVON SMITH V.

Defendants CO J Gansner, ET AL

2. Court (if federal court, name the district; if state court, name the county) Middle

3. Docket or Index number Civil Action NO. 1:07-1802

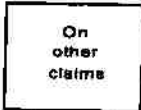
4. Name of Judge assigned to your case Judge Kane

5. Approximate date of filing lawsuit 07, September or 08 I forget

6. Is the case still pending? Yes ☐ No ☒

If NO, give the approximate date of disposition Don't know

7. What was the result of the case? (For example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?) Dismissed for Failure to State Claim And For Failure to State Relief Granted And I could not find no one to help me do this so thats why.



C. Have you filed other lawsuits in state or federal court?

Yes ☒ No ☐

D. If your answer to C is YES, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same format.)

1. Parties to the previous lawsuit:

Plaintiff DEVON Smith V.

Defendants Swanick, et al

2. Court (if federal court, name the district; if state court, name the county) Middle

3. Docket or Index number No. 07-1803

4. Name of Judge assigned to your case Judge Kane

5. Approximate date of filing lawsuit 07-08 September

6. Is the case still pending? Yes ☐ No ☒

If NO, give the approximate date of disposition Don't know

7. What was the result of the case? (For example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?) Dismissed for Failure to State Relief Granted And Failure to State Claim So I did not have anyone to help me that way.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 6th day of May, 2010.

Signature of Plaintiff Devon A Smith

Inmate Number 10-2491

Institution Address Montgo Nery County Prison
60 Eagleville Road
Eagleville, Pa 19403-1400
M-2 Mental Health ward

Note: All plaintiffs named in the caption of the complaint must date and sign the complaint and provide their inmate numbers and addresses.

I declare under penalty of perjury that on this 6th day of May, 2010, I am delivering this complaint to prison authorities to be mailed to the Clerk's Office of the United States District Court for the Eastern District of Pennsylvania.

Signature of Plaintiff: 